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Note verbale dated 26 February 2018 from the Permanent Missions of Chile and Colombia to the United Nations addressed to the Chair of the Committee

The Permanent Missions of Chile and Colombia to the United Nations present their compliments to the Chair of the Committee established pursuant to resolution 1540 (2004) and have the honour to refer to their joint peer review on the implementation of resolution 1540 (2004), conducted in 2017 (see annex).

In this regard, the Permanent Missions of Chile and Colombia express their interest in making a public presentation of the results of this joint peer review in New York, in April 2018.

The Permanent Missions of Chile and Colombia have the honour to kindly request the support of the Committee to circulate the present letter and its annex as a document of the Security Council that will be used as a background paper for the presentation.

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Annex to the note verbale dated 26 February 2018 from the Permanent Missions of Chile and Colombia to the United Nations addressed to the Chair of the Committee

Peer review of Chile and Colombia on the implementation of Security Council resolution 1540 (2004)

[Original: Spanish]

Introduction

Chile and Colombia are countries committed to efforts to combat terrorism and the proliferation of weapons of mass destruction. They both strongly support the implementation of Security Council resolution 1540 (2004), and therefore have decided to undertake joint work in this area.

A decision was taken to conduct a peer review exercise, among other bilateral activities to advance implementation of resolution 1540 (2004). The objective of the exercise was to share national experiences relating to implementation of the above-mentioned resolution, and to establish cooperation in this area. This reflects the excellent relationship between the two countries, which are both dedicated to adherence to legal instruments and international institutions, and to their commitment to the disarmament and non-proliferation regimes.

Conducting a peer review exercise entails direct involvement with the entities responsible for implementation of this resolution at the national level, so that the tangible results obtained will improve each country's capacities in this area. The atmosphere of trust and transparency that prevailed during the Chile-Colombia peer review reaffirmed the added value of these activities, as well as the interest within both countries in strengthening compliance with the resolution.

Having completed this exercise, Chile and Colombia invite other countries of the region to reap the benefits of such initiatives, the impact of which is not confined exclusively to compliance with the above-mentioned resolution, but also extends to other settings where the various issues linked to weapons of mass destruction are addressed.

The peer review is an exercise whereby two or more countries voluntarily agree to share information and experiences related to the status of implementation of resolution 1540 (2004). To date, there have been only two such reviews: Croatia and Poland in 2013, and Belarus, Kyrgyzstan and Tajikistan in 2016.

In October 2017, the United Nations Office for Disarmament Affairs and the Inter-American Committee against Terrorism of the Organization of American States (OAS) supported and were present during the peer review of Chile and Colombia, the first in the hemisphere and the third worldwide. To that end, the two countries agreed on a schedule of work, which included videoconferences and exchanges of preliminary information, in order to arrange the field visits, which took place from 4 to 6 October in Bogotá, and from 24 to 26 October in Santiago and Valparaiso, Chile. The Colombian entities that took part include the Ministry of Foreign Affairs; the Ministry of Commerce, Industry and Tourism; the Ministry of Health; the Ministry of Justice and Law; the Ministry of Mines and Energy; the Ministry of Defence; the Ministry of Agriculture and Rural Development; the Ministry of the Environment and Sustainable Development; the Directorate of National Taxes and Customs; the company Industria Militar; the National Police; the National Health Institute; the Colombian Institute for Agriculture and Fishing; the National Disaster Risk Management Unit; the Colombian Geological Service; the Colombian Council for

Chemical Safety; the National Entrepreneurs' Association of Colombia; and the National Intelligence Directorate.

The Chilean entities that were present during the review exercise were the Ministry of the Interior and Public Security; the Ministry of Foreign Affairs; the Ministry of Defence; the Ministry of Health; the Directorate General for National Mobilization; the Directorate General for Maritime Territory and the Merchant Marine; the National Intelligence Agency; the Chilean Nuclear Energy Commission; and the National Customs Service.

Best practices

While neither Chile nor Colombia at present has legislation that codifies or expands the scope of action of the institutions responsible for implementation of resolution 1540 (2004), the two countries have sought to apply a number of regulatory instruments and operational measures to comply with this resolution, and with their other international obligations in the area of weapons of mass destruction.

In the area of international law, the two countries have the same obligations with regard to weapons of mass destruction: both have ratified the Treaty on the Non-Proliferation of Nuclear Weapons, the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction and the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, and both are governed by the standards of the International Atomic Energy Agency.

As concerns domestic law, the Chilean delegation could see that Colombia has a legal framework that enables it to fulfil, for the most part, these international obligations and those set out in resolution 1540 (2004). The most relevant regulations are: article 81 of the Constitution, which prohibits the manufacture, import, possession or use of chemical, biological or nuclear weapons; Act No. 10 (1980), approving the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction; Act No. 114 (1985), approving the Treaty on the Non-Proliferation of Nuclear Weapons; and Act No. 525 (1999), implementing the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction.

Decree No. 390 of 2016, which modernized the customs regulations of Colombia, is also important. It covers fundamental aspects of the application of resolution 1540 (2004) related to imports; in particular, article 182 establishes a prohibition on importing, among other items, chemical, biological or nuclear weapons, or goods which are prohibited under international conventions to which Colombia has acceded or to which it may accede in the future. This Decree is also the first Colombian regulation which mentions the obligation to comply with resolutions of the Security Council. In addition, article 182 prohibits or restricts the import of goods from those countries against which the Security Council has imposed measures to that effect.

In contrast to Colombia, Chile, although requiring the destruction of chemical weapons that the State has in its possession — through its ratification of the Chemical Weapons Convention (signed on 14 January 1993 and ratified on 12 July 1996) and Supreme Decree No. 1.764 of 2 December 1996, promulgating the Convention — does not entirely prohibit their manufacture, ownership or possession, which are conditionally permitted, provided that certain requirements are fulfilled. Accordingly,

Chile is considering a draft law on implementation of the Chemical Weapons Convention and the Biological Weapons Convention.

Currently there is some control over the import and export of certain hazardous materials in Chile. National Customs Service Resolution No. 01110 of 12 April 2000 provides that any import or export of chemicals included in Schedule 1, 2 or 3 of the Chemical Weapons Convention must be approved and authorized by the National Authority for Chemical Weapons.

Furthermore, article 80 bis of the Chilean Customs Ordinance, which has been incorporated into law by Act No. 20.997 (which modernizes the customs legislation), provides that the National Customs Service will reject customs destination certificates of any kind, when so requested by an international organization in accordance with an international agreement that is in force in Chile.

With regard to the regulation of international trade, Colombia has put in place the single window for foreign trade and the single model for revenues, service and computerized control, and their use is mandatory. These systems were identified as tools that may facilitate the future implementation of export controls for defence and dual-use materials. The incorporated risk management system is of particular interest.

Both Chile and Colombia take an inter-agency approach to the implementation of resolution 1540 (2004), which is key, since the different areas covered by this resolution fall within the competency of a number of public and private bodies. When cooperation among these bodies is as expeditious and efficient as possible, so is the capacity of the State as a whole to respond to the challenges and opportunities posed by resolution 1540 (2004). Therefore, it is worth noting the establishment in Colombia of inter-institutional national authorities: the National Authority for the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and Their Destruction, established in 2002, and the National Authority for the Prohibition of Biological and Toxin Weapons, which is now being established.

For its part, in 2012 Chile established, by Decree No. 14 of the Ministry of Foreign Affairs, the Interministerial Committee for implementation of and compliance with the resolutions of the United Nations Security Council, composed of representatives of the Ministry of the Interior and Public Security, the Ministry of Foreign Affairs, the Ministry of Defence, the Ministry of Finance, the General Secretariat of the Presidency and the Ministry of Justice, with the National Intelligence Agency in a standing advisory role. The 1540 Subcommittee is a subsidiary organ of this Committee and consists of representatives of the public institutions responsible for implementation of resolution 1540 (2004). Although the decisions of these entities are not binding, they are a valuable tool for strengthening inter-agency cooperation in matters related to resolution 1540 (2004).

With regard to the technical ability to implement the various provisions of resolution 1540 (2004), it was noted that Chile provides regular training, with the support of the United States of America, for the officials of its law enforcement agencies and regulatory authorities, such as customs and police, in areas including weapons of mass destruction commodity identification, the interception of weapons of mass destruction and the analysis of end use and users for the purposes of export licences. This has made it possible to train hundreds of officials who are directly responsible for border control and the inspection of cargo, many of whom have even been certified as trainers, all of which directly strengthens the implementation of paragraph 3(c), which requires States to develop and maintain appropriate effective border controls and law enforcement efforts. In that connection, it should be noted that Chile has been fortunate to benefit from international cooperation in the matter of appropriate tools for customs control work, mainly in access to detection equipment.

Given that over 90 per cent of Chilean international trade is conducted by sea, it is worth noting the importance of the work of the Directorate General of Maritime Territory and the Merchant Marine, an agency that reports to the Ministry of Defence through the Navy. The agency tightly controls maritime traffic through the Maritime Geographic Information System, by analysing the movements of merchant vessels from the moment they approach the country's exclusive economic zone and during transit through Chilean territorial waters, with units and personnel adequately trained and equipped to respond to the various threats to safety at sea and national security.

In the area of strategic trade, Chile has started work to improve the analysis of the risks posed by exports of materials that could be used in the production of weapons of mass destruction. A lead role in this effort has been taken by the National Intelligence Agency, a body that reports to the President of the Republic through the Ministry of the Interior and Public Security, which for this purpose established a Department for Non-proliferation that cooperates with other government agencies, such as the Ministry of Foreign Affairs, in risk analysis related to certain exports. This was of interest to Colombia and, consequently, its delegation for the second on-site visit included a representative of its National Intelligence Directorate.

The review highlighted the involvement of academia in Chile, especially with regard to awareness-raising in relation to chemical materials, reinforcing not only knowledge and the legitimacy of the actions taken in this field, but also the use, control and prevention of misuse of the materials in question.

With regard to paragraph 3(b) of resolution 1540 (2004), which requires States to develop and maintain appropriate effective physical protection measures, during the visit to the IAN-R1 nuclear reactor in Colombia and the centralized facility for radioactive waste management, Chile learned of that country's experience in implementing a package of measures ranging from the imposition of mandatory physical security measures that can be verified through inspections by the regulatory authority, applicable to authorizations to operate nuclear and radioactive facilities, and, also, the effective installation of equipment to properly safeguard the physical protection of category I and II nuclear and radioactive materials in the country as a whole. During the presentation and the visit, special mention was also made of the cooperation extended by the United States Department of Energy to safeguard the country's radioactive facilities.

Finally, while Chile and Colombia recognize the preventive approach of resolution 1540 (2004), during the peer review they also considered the status of the agencies that respond to nuclear, biological, chemical and radioactive incidents. The National Police, the National Directorate of Firefighters and the armed forces of Colombia have the capacity to respond to such incidents. The National Police has a national response unit for nuclear, biological, chemical and radiological incidents, the main purpose of which is to strengthen national response capacities through the appropriate response to attacks or incidents involving the use of weapons of mass destruction. In addition, the unit supports the Ministry of Mines and Energy, the Ministry of Health, the National Health Institute and national emergency response agencies in activities requiring assistance related to nuclear, biological, chemical and radiological substances. The firefighters also have an effective response capacity for incidents involving such substances. The Colombian National Army has a disaster prevention and response battalion, with a company specializing in such incidents, comprising explosives and chemicals experts.

Challenges

One of the main gaps noted in both Colombian and Chilean legislation is the absence of export regulations to comply fully with paragraph 3(d) of resolution 1540 (2004), under which States are required to establish, develop, review and maintain appropriate effective national export and trans-shipment controls over nuclear, chemical and biological weapons, their means of delivery and related materials, including appropriate laws and regulations. Indeed, although Chile and Colombia regulate the export of delivery systems such as missiles and other munitions, they have no export control laws for defence materiel and dual-use goods that conform to the standards required by export control regimes and they regulate only a fraction of the materials covered by those regimes.

In addition, in Chile Security Council resolutions must be implemented by a presidential decree, a process that delays the effective application of sanctions against State or non-State entities.

At present, the Chilean Criminal Code does not expressly prohibit the import and manufacture of nuclear, chemical and biological weapons, because the Chemical Weapons Convention and the Biological and Toxin Weapons Convention have not yet been fully implemented, resulting in a limited capacity to enforce compliance with their rules, through measures such as inspections. These rules have only been implemented by industry in good faith and voluntarily. Perhaps the most important point in this regard is the continuing lack of a legal instrument to support complete and comprehensive application and implementation management, involving enforcement mechanisms, control, provision of licences and, in some cases, prohibitions, and even including measures on dual-use items.

As for the control of border and police posts, in relation to resolution 1540 (2004) Chile and Colombia need to adopt a broad view of this concept in relation to resolution 1540 (2004), by including maritime links to and from their countries, and consider ratifying and implementing the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, the first international instrument criminalizing offences committed outside territorial waters and establishing standards and safeguards for visits to and inspections of ships in connection with biological, chemical and nuclear weapons and related materials.

In the case of Chile, a risk analysis for the field of customs control should be designed using electronic tools; staff members currently carry out such analysis manually, which hampers the efficiency and timeliness of their control work and makes national coverage difficult. Nor are the regulatory and technical tools in place at this time for certification of authorized economic operators. The use of these tools should be considered, as such operators provide a reliable service and reduce risks in foreign trade operations.

With regard to paragraph 3(a) of resolution 1540 (2004), in which States are required to develop and maintain appropriate effective measures to account for and secure nuclear, chemical or biological weapons and their means of delivery in production, use, storage or transport, Chile must impose greater restrictions on the sale of chemical and biological substances and improve the safety during transportation of these substances and of radioactive and radiological materials.

On the basis of the above, the Colombian delegation highlights the importance of moving decisively towards the centralization of information so that, systematically, rapidly and in real time, various agencies of the Chilean State and their branches in different parts of the country can receive timely data for profiling, rapid response and inter-agency coordination. In the light of the issues identified in the case of Chile, it

should be noted that the challenges faced in implementation of resolution 1540 (2004) in relation to transit and trans-shipment require cooperative endeavours and greater responsibility concerning goods entering and moving through Chilean territory.

Another element considered in the review is the issue of sanctions, for both the Colombian and the Chilean authorities. Both countries should revise and strengthen sanctions in this area.

This peer review has revealed the need for Chile and Colombia to strengthen measures to prevent financial transactions that could be used to pay for the manufacture, procurement, possession, development, transport, transfer or use of nuclear, chemical or biological weapons or their means of delivery, as stipulated in paragraph 3(d) of resolution 1540 (2004), referring to controls on providing funds and services such as financing, and transporting that would contribute to proliferation.

Work is still needed in Chile and Colombia to strengthen ties between the public and private sectors and make them work together in order for the two countries to meet their commitments under the resolution and in relation to the control of strategic trade. Partnerships that could be strengthened in both Chile and Colombia include strategic partnerships with the industrial sector, academia, companies in the health, pharmaceutical and agricultural sectors, and forensic and veterinarian research and analysis centres, as well as trade associations and logistics operators involved in the transport, import and export of nuclear, biological, chemical or radiological substances.

Likewise, while the importance of involving academia and the private sector in general was noted, the peer review has shown that citizens have been left out as a result of a failure to recognize them as the real beneficiaries of the various actions carried out by States, beyond international compliance with the resolution. This could make it more difficult to assess the actual effectiveness of the actions to be undertaken under resolution 1540 (2004). The awareness-raising effort should include recognition of the importance of prevention and control, given that the proliferation of chemical, biological, radiological or nuclear materials may be a hazard, for example, to health and safety. This may lead to the conclusion that the perspective and actions to be adopted when addressing nuclear, biological, chemical or radiological risks should not remain within the purview of the State, and the activities envisaged in the action plans developed by Chile and Colombia to deal with those materials may provide a good tool for that purpose.

In the case of Colombia, there has been no significant progress in the implementation of the activities proposed under the action plan for the implementation of resolution 1540 (2004), which was submitted in 2013. In that regard, the need to rethink that action plan and to align it with what Colombia actually needs to implement the resolution is also recognized in the peer review.

Another issue noted by Colombia is that neither the Ministry of Economy of Chile nor entities focusing on or specialized in the management of the trade policy of that country were represented in either visit. This is regarded as an important issue, given how the bill on strategic trade may develop and the impact of the resulting law when it is enacted.

In both cases, however, it is clear that inter-institutional coordination is a complex issue and that there is no specific model that could guarantee a strong and sustained commitment by all entities to the activities and challenges required under resolution 1540 (2004). The coordination of the entities involved in the implementation and the constant need to review the areas for improvement and further work in the fields of competence and technical expertise of each entity present a serious challenge. The implementation of resolution 1540 (2004) and of the

international instruments concerning weapons of mass destruction requires continuous work, for which there is no time limit. The commitments do not vary in essence, but the threats and challenges evolve, thus obliging States to remain vigilant and ready to take appropriate measures.

With regard to the capacity to respond to chemical, biological, radiological or nuclear incidents, both delegations identified challenges, such as the need in Colombia for an emergency protocol that would activate the prevention and response system among first responders. The Chilean delegation suggested establishing an interministerial team to respond to chemical, biological, radiological or nuclear emergencies, with a communication action plan for determining responses and responsibilities. While Chile has established such an entity for radiological incidents, the Security Commission for Radiological Emergencies, the Colombian delegation noted the high number of institutions that comprised it (18), which could hinder coordination.

Opportunities for cooperation between Chile and Colombia

There exist countless opportunities for cooperation between Chile and Colombia to implement resolution 1540 (2004), in particular among their law enforcement agencies, such as the police and customs. Strengthening legal and technical expertise was identified in the peer review as a potential area of development, in particular by means of inter-agency cooperation aimed at strengthening technical and scientific assistance, capacity-building and policy.

One area of particular importance for cooperation is the design and implementation of export control systems, both activities requiring awareness-raising and capacity-building efforts in the public and private sectors. A first step in this direction could be the designation by Colombia of a point of contact to act as the counterpart of the 1540 Subcommittee of Chile, whose members worked on drafting the law to regulate international trade in dual-use material that was sent for review to the executive branch in August 2017.

Similarly, in terms of regulation of strategic trade, cooperation between the intelligence services of Chile and Colombia could contribute to improving risk analysis procedures for applications for the export or transit of defence and dual-use material, as well as the sharing of information from companies exporting from Chile to Colombia, and vice versa, with a view to improving identification and strengthening controls to prevent the use of those companies for the illegal transport of such material. In the same vein, focal points or points of contact with countries in the region could be identified to strengthen prevention measures and facilitate the exchange of strategic information for the comprehensive control of strategic trade (export, transit, trans-shipment and brokering).

In the area of capacity-building, it is important for Chile and Colombia to learn from each other, as synergy could be achieved by using the expertise developed by each country. In this context, it would be interesting to consider establishing a binational group of trainers to provide capacity-building in the area of non-proliferation not only to the institutions of the two countries, but also to those in other countries in the region, thereby turning Chile and Colombia into "security exporters" in that area.

Similarly, areas of cooperation with agencies and international bodies could be established to assist in the implementation of resolution 1540 (2004) with regard to the matters identified for improvement in the peer review.

It would be worth examining the impact of the peer review in the medium and long term to assess how it has affected the practices of each country and the improvements that they have made after taking part in this exercise. This would also allow the United Nations and OAS to understand the effectiveness of such activities in order to continue to support them in other countries.

Conclusion

The peer review is an instrument that brings the implementation of resolution 1540 (2004) out of the realm of discourse and helps to increase awareness of this threat, from which no country is immune, and the efforts being made to avert it.

The peer review conducted by Chile and Colombia has allowed them to appreciate the differences in their approaches to and existing capacities in the implementation of resolution 1540 (2004), thereby allowing each country to assess its strengths and weaknesses more clearly and to better focus its bilateral cooperation efforts.

The review has shown that different security approaches concerning weapons of mass destruction have prevailed in Chile and Colombia. Thus, Colombia has gone further in the implementation of internal security measures concerning those weapons, while Chile has approached resolution 1540 (2004) more from the perspective of international security.

With regard to the conditions prevailing in each country for the implementation of resolution 1540 (2004), there is a difference in their overall situation. Colombia has more legal tools at its disposal than Chile, but less of the capacity and equipment necessary to implement them. On the other hand, the greater technical capacity and equipment available in Chile cannot be fully exploited owing to a narrower legal framework for implementing the resolution.

It is worth noting that there are different and differentiated capacities, which highlights the need for strengthening complementarity leading to positive synergy, which is necessary at both the national and regional levels. It should also be noted that not all countries have the same capacity to implement resolution 1540 (2004), which underlines the importance for international bodies to provide assistance, including in terms of capacity-building, to the entities responsible for its implementation.

In this connection, the peer review has clearly shown the work that remains to be done to emphasize prevention as the guiding principle of resolution 1540 (2004).